

be denied due to lack of substantial and credible medical evidence that claimant's work duties caused or aggravated his need for benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record compiled to date and the claimant's brief, the Appeals Board (Board) makes the following findings of fact and conclusions of law:

On July 1, 1996, claimant was taken to the hospital from work for an "asthma attack"² induced by workplace chemicals. The record of the preliminary hearing held on July 1, 2003, before Judge Clark, contains the medical records of six physicians including reports from the court-ordered independent medical examiner, Dr. Gerald R. Kerby. Although it appears that claimant's medical history changes with each practitioner, their medical opinions are remarkably consistent. The records and reports of four of these physicians support a finding that claimant now has asthma and that it became symptomatic on July 1, 1996, most likely due to his inhalation of chemicals at his workplace. Even Dr. Allen J. Parmet, who examined claimant at respondent's request, opined claimant "may have had an exacerbation of his asthma due to workplace exposure to high levels of methyl ethyl ketone in the summer of 1996."³ Furthermore, although the asthma is described as a preexisting condition, Dr. Val Brown treated claimant from 1962 until 1981 and had no record of claimant being diagnosed or treated for asthma.

The Board finds that claimant has met his burden of proof to establish he suffered a work-related accident or occupational disease. What is less clear, however, is whether claimant's current problems are due to the workplace exposure versus other contributory agents, activities, and noncompliant behavior.⁴ Nevertheless, based on the record compiled to date, the Board finds and concludes, by the barest of margins, that claimant has likewise met his burden of proof in this regard. Consequently, the Board remands the case to Judge Clark for a determination on the remaining issues including claimant's request for preliminary hearing benefits of medical treatment and temporary total disability compensation.

WHEREFORE, Administrative Law Judge Clark's preliminary hearing Order dated July 1, 2003 is reversed and remanded for further orders consistent herewith.

IT IS SO ORDERED.

² P.H. Trans. Resp. Ex. 2 and 3.

³ P.H. Trans. Resp. Ex. 2.

⁴ Cf. *Burton v. Rockwell International*, 266 Kan. 1, 967 P.2d 290 (1998).

Dated this ____ day of October 2003.

BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
Frederick L. Haag, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director